

AMENDMENT OF THE DRAWINGS

Attached is a replacement sheet of drawings which reflects a change to FIG. 3. The replacement sheet of FIGS. 1, 2 and 3 replaces the originally-filed drawing sheet of FIGS. 1, 2 and 3. The replacement sheet of FIGS. 1, 2 and 3 reflects a change in FIG. 3 only, specifically adding the reference numeral 58 which was inadvertently omitted from the drawing, but which appears in paragraph [0037] of the specification as originally filed. No new matter has been added.

### **REMARKS**

The Office Action mailed November 15, 2006 has been received and reviewed. Claims 1-26 are pending with claims 18-22 having been withdrawn subject to an election requirement.

Claims 1-17 and 23-26 are rejected in view of cited art. Claims 1, 6, 8-10, 16 and 23 are amended. Claims 7, 10 and 15 are cancelled. The Applicant submits that the claims are now in condition for allowance for the reasons set forth hereinafter.

#### **Objection To Drawings**

The Examiner advises of objections to the drawings. The Applicant notes that the drawing objections enumerated as a., c., and d. in the Office Action are overcome by amendment of the specification to correct typographical errors. FIG. 3 is otherwise revised to overcome the objection.

#### **Rejection Of Claims 1-9, 14 And 16 Under 35 U.S.C. § 112, Second Paragraph**

Claims 1-9, 14 and 16 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Specifically, claims 1-9, 14 and 16 are considered by the Examiner to be indefinite for use of the term "sandwich-like." The rejection is traversed. The Applicant notes that the term "sandwich-like" is fully and clearly defined in paragraph [0020] of the specification and respectfully submits that the claims are not indefinite.

Claims 1-9 are considered by the Examiner to be indefinite for use of the term "selected shelf-life." Claim 1 is amended, thereby rendering the rejection moot.

Claims 2 and 3 are considered by the Examiner to be indefinite for use of the term "bread-like." The rejection is traversed. Again, the term bread-like is described in the specification at paragraph [0020], and the Applicant respectfully submits, in addition, that the term "bread-like" clearly indicates to anyone of skill in the art a product or item that is grain-based similar to bread. The term is, respectfully, not indefinite.

Claim 7 is considered by the Examiner to be indefinite. Claim 7 is cancelled

thereby rendering the rejection moot.

Claims 8 is considered by the Examiner to be indefinite. Claim 8 is amended to overcome the rejection.

Claim 26 is considered by the Examiner to be indefinite for use of the word “utilitarian.” The rejection is traversed. The word “utilitarian” is not only well known in its meaning, but the use of the word in the context of non-comestible items that may be dispensed in the invention is clearly defined in the specification at paragraph [0046]. The claim is not indefinite.

Rejection Of Claims 1-4, 6, 9-11, 13-14 And 16-17 Under 35 U.S.C. § 102(b)

Claims 1-4, 6, 9-11, 13-14 and 16-17 are rejected under 35 U.S.C. § 102(b) as being anticipated by Nedblake, Jr. (US 5,664,671). The rejection is overcome by clarifying amendment. Amended claims 1 and 10 both require an opening mechanism for accessing the interior of a non-beverage food-product enclosing portion of the container. Nedblake discloses no opening mechanism as claimed. Nedblake discloses that the non-beverage food-product enclosing portion (14) comprises a lower section (32) and an upper section (34). At column 2, lines 7-12, Nedblake states “[C]over 34 engages lower section 32 at joint 38 and presents upper surface 40 configured to mate with and engage base 20 as shown in FIG. 2. Lower section 32 and cover 34 cooperate to present lower container side walls 42, preferably configured to present the same diameter in cross-section as upper container side walls 18.” Nedblake is silent (both textually and visually) as to any device or mechanism for opening the non-beverage food-containing portion of the container. Therefore, Nedblake does not anticipate claims 1-4, 6, 9-11, 13-14 and 16-17.

Rejection Of Claims 1-8 Under 35 U.S.C. § 102(b)

Claims 1-8 are rejected under 35 U.S.C. § 102(b) as being anticipated by Feldmeier, et al. (US 6,048,558) (“Feldmeier”). The rejection is overcome with clarifying

amendment. Amended claim 1 requires a container sized and shaped for vending from the containerized beverage pathways of a vending machine structured for vending containerized beverages. Feldmeier fails to teach a container that is sized and shaped for dispensing from the containerized beverage pathways of a vending machine. Claims 1-8 are not anticipated, therefore.

Rejection Of Claims 10-13 Under 35 U.S.C. § 102(b)

Claims 10-13 are rejected under 35 U.S.C. § 102(b) as being anticipated by Bezek, et al. (US 6,472,007) ("Bezek"). The rejection is overcome by amendment of claim 10 to incorporate claim 14. As amended, claim 10 requires a sandwich-like product that is not taught or suggested by Bezek. Therefore, claims 10-13 are not anticipated.

Rejection Of Claims 23-25 Under 35 U.S.C. § 102(b) (Sayre)

Claims 23-25 are rejected under 35 U.S.C. § 102(b) as being anticipated by Sayre (US 2,433,926). The rejection is overcome by amendment of claim 23. As amended, claim 23 requires a container sized and shaped for dispensing through the containerized beverage pathways of the vending machine, which is not taught by Sayre. Additionally, the claims require two disparate products contained within the container. Sayre only teaches one product contained within the container. Therefore, claims 23-25 are not anticipated.

Rejection Of Claims 23-25 Under 35 U.S.C. § 102(b) (Howes, et al.)

Claims 23-25 are rejected under 35 U.S.C. § 102(b) as being anticipated by Howes, et al. (US 5,056,659) ("Howes"). Claim 23 is amended to clarify that the products housed within the dispensable container exclude non-utilitarian items. Support for the amendment is found in the specification at paragraph [0046] wherein the contents of the container are not meant to include, and therefore exclude, non-

utilitarian items such as prize notification devices as taught by Howes. Claims 23-25 are not anticipated, therefore.

Rejection Of Claims 5 And 7 Under 35 U.S.C. § 103

Claims 5 and 7 are rejected under 35 U.S.C. § 103 as unpatentable over Nedblake in view of Sanford (US 1,830,246). The Examiner states that Nedblake discloses the invention, except for a teaching of a sandwich-like product enclosed in a wrapper and where the disparate food product is a non-beverage. The Examiner states that Sanford discloses a wrapper to enclose a sandwich (referencing claim 5), and discloses a sandwich like product and a non-beverage disparate food product.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on the applicant's disclosure. In re Vaeck, 20 U.S.P.Q. 2d 1438 (Fed. Cir. 1991); MPEP 706.02(j). No *prima facie* case of obviousness can be established because there is no suggestion or motivation found in either reference for wrapping a sandwich for placement within a vendable container as claimed. More importantly, there is no reasonable expectation of success to be found in the references for making the combination because, in fact, the package of Sanford could not be used to enclose a sandwich that is housed within the container disclosed by Nedblake. That is, Sanford teaches a square envelope-type package that has a follower (6) that is sized in length comparable to the width of the envelope. The follower is used to squeeze the sandwich out of the envelope. It would be impossible, therefore, to fit the necessarily square envelope-type package of Sanford into the round lower compartment of

Nedblake. Therefore, no such combination can be made and claims 5 and 7 are not obviated.

Rejection Of Claim 15 Under 35 U.S.C. § 103

Claim 15 is rejected under 35 U.S.C. § 103 as being unpatentable over Nedblake. The Examiner states that Nedblake discloses the claimed invention except where the disparate food product is cookies, which the Examiner states is obvious to one of skill in the art in view of Nedblake's alleged disclosure of providing a complete meal of a main course, a beverage and a confectionary food product. The Examiner states that cookies in a vendable sandwich packaging would have been obvious since such pastries are well known to be vended and further complement sandwiches as a dessert. The rejection is rendered moot by the cancellation of claim 15.

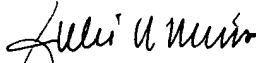
Rejection Of Claim 26 Under 35 U.S.C. § 103

Claim 26 is rejected under 35 U.S.C. § 103 as being unpatentable over Howes. The Examiner states that Howes discloses the invention as claimed, except for two disparate products where both are utilitarian, non-comestible products in a vendable form. The Examiner states that Howes discloses a "container comprising a first non-comestible product that can hold liquids, such as bleach, detergents and automotive oils." The Examiner further states that bottles of such non-comestible products are known to be vendable and, therefore, since Howes structures said bottle from plastic that takes the shape of a commonly dispensed beverage container, it would have been obvious to vend the combination of non-comestible utilitarian products. The rejection is traversed. As noted previously, the invention specifically excludes non-utilitarian items such as prize notification devices as taught by Howes. Howes does not teach or suggest a vendable container structured for containing two utilitarian products. Therefore, claim 26 is not obviated.

**CONCLUSION**

In view of the amendments made and arguments presented, the Applicant submits that claims 1-6, 8, 9, 11-14, 16, 17 and 23-26 present patentable subject matter. Reconsideration and allowance are requested.

Respectfully submitted,



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Attached: Replacement Sheet of FIGS. 1, 2 and 3